

**BEFORE THE APPELLATE AUTHORITY
(Under the Right to Information Act, 2005)
SECURITIES AND EXCHANGE BOARD OF INDIA**

Appeal No. 6171 of 2024

Shashank Dubey	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application (Reg. No. SEBIH/R/T/24/00135) dated May 04, 2024 (forwarded by Department of Economic Affairs and received by SEBI on July 16, 2024) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated August 13, 2024, responded to the application filed by the appellant. The appellant filed an appeal dated August 30, 2024 (received by the Office of Appellate Authority on September 23, 2024).
2. In the appeal, the appellant has made a request for a personal hearing. I have carefully considered the application, the response and the appeal. I note that the nature of the requests, the response of the CPIO and the grounds of appeal are self-explanatory and not complex. On the issue of providing an opportunity of hearing by the First Appellate Authority (hereinafter referred to as “**FAA**”) under RTI Act, a full bench of Hon’ble Central Information Commission (hereinafter referred to as “**CIC**”) in *Bombay Stock Exchange Limited vs Securities and Exchange Board of India* (File No. CIC/SM/A/2011/001687) observed that “*It is not practical to lay down an inflexible rule that PIOs and AAs will always offer an opportunity of hearing to the parties, let alone to the 3rd party. They may do so as per their discretion, keeping in view the complexity of legal and factual issues involved, without forgetting that timelines are to be adhered to, being the essence of the Act.*” Therefore, it is noted that there is no specific requirement under the provisions of the RTI Act, of providing a personal hearing by the FAA and that the discretion to give hearing to the appellant shall be exercised considering the complexity of the issues involved and the timelines specified under the RTI Act. In this context, reliance is also placed on the decisions of the Hon’ble CIC in the matters of *Mr. Milind Hemant Kotak, Mumbai vs. Canara Bank* (Decision dated April 24, 2008) and *Mr R.K Jain vs. UPSC* (Decision dated March 10, 2014). Therefore, I am of the opinion that the appeal can be decided on the basis of material available on record.

3. **Ground of appeal** - On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent.
4. **Request no. 1 of the application-** The appellant, vide his request no. 1 of the application dated May 04, 2024, *inter alia*, sought information regarding income tax return, service book, service details, appointment letter, details of movable and immovable property owned by family, etc. of Mr. Santosh Kumar Sharma, CPIO SEBI and Mr. B. Rajendran, Executive Director/FAA, SEBI.
5. **Reply of the Respondent** - The respondent, in response to the aforesaid request informed that the information sought relates to personal information, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual and may also endanger the life or physical safety of the person(s). The same is, therefore, exempt in terms of Section 8(1)(g) and 8(1)(j) of the RTI Act, 2005.
6. I have perused the aforesaid requests and the response provided thereto. I note that the requested information has been denied by the respondent under section 8(1)(g) and 8(1)(j) of the RTI Act. In this context, reference is made to the judgment of the Hon'ble Supreme Court of India in the matter of *Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal* in Civil Appeal No. 10044 of 2010 with Civil Appeal No. 10045 of 2010 and Civil Appeal No. 2683 of 2010 (judgement dated November 13, 2019) wherein "personal information" envisaged under Section 8(1)(j) of RTI Act has been exemplified in the context of earlier ratios laid down by the same Court in other matter(s). The Hon'ble Supreme Court held that: *"59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive..."* Accordingly, I do not find any deficiency in the response of the respondent. Further, I note that the appellant in his appeal has cited various orders pertaining to providing of information regarding service books, income tax return, appointment letter, etc. of employees of Public Authorities under RTI Act. However, on perusal of the appeal, I note that the appellant has failed to provide any submissions as to how the disclosure of the information is justified

by larger public interest. In this context, I note that the Hon'ble High Court of Delhi in the matter of *Municipal Corporation Delhi vs. Rajbir W.P.(C) 13219/2009* and CM 14393/2009, decided on 24.8.2017 had held that:

"9..... Respondent has not provided any credible justification for seeking information regarding the personal assets of the MCD employee in question.

10. There can be no doubt that the information sought by respondent is personal information concerning an employee of MCD. Such information could be disclosed only if respondent could establish that disclosure of such information was justified by larger public interest." Accordingly, I do not find any deficiency in the response of the respondent.

7. **Request nos. 2 - 4 of the application** - The appellant, vide his request nos. 2 -4 of the application dated May 04, 2024, *inter alia*, sought information regarding income tax return, service book, service details, appointment letter, details of movable and immovable property owned by family, etc. of CPIOs and FAAs of Goods and Service Tax Network (GSTN), Directorate General of Commercial Intelligence and Statistics, Kolkata (DGCIS) and Directorate General of Systems and Data Management, Central Board of Indirect Taxes and Customs, New Delhi
8. **Reply of the Respondent** – The respondent, in response to request nos. 2 - 4 of the application informed that the information sought do not pertain to SEBI and hence, the information sought is not available with SEBI.
9. I note that the respondent has categorically stated that the requested information is not available with SEBI. I note that the respondent can only provide information that is available in the records. In this context, I note that the Hon'ble Supreme Court of India in *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors* (Judgment dated August 9, 2011) held that *"The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant."* Accordingly, I do not find any deficiency in the response of the respondent.

10. **Request nos. 5, 6 and 7 of the application** - The appellant, vide his request nos. 5 and 7 of the application dated May 04, 2024, *inter alia*, sought information regarding complaints and disciplinary action taken against the officers mentioned in his application from the year 2005 to 2024. The appellant vide his request no. 6, *inter alia*, sought information regarding pay scale of the officers mentioned in his application along with information on disciplinary action, basis of promotion, etc.
11. **Reply of the Respondent** - The respondent, in response to request nos. 5 and 7 of the application informed that the information sought with regard to complaints and action taken against officials of SEBI pertains to the internal functioning of SEBI and is strategic in nature, disclosure of which may hamper the decision making by SEBI. Further, the information sought is personal information, the disclosure of which may cause unwarranted invasion into the privacy of the individual. In view of the same, the information be exempt u/s 8(1)(a) and 8(1)(j) of the RTI Act, 2005.

In response to request no. 6, the respondent informed that the information sought with regard to the details of monthly remuneration received by SEBI officials is disclosed on the SEBI website under the disclosures u/s 4(1)(b) of the RTI Act, 2005. The respondent provided the relevant link to access the same. Further the respondent informed that information sought pertaining to officials of SEBI pertains to the internal functioning of SEBI and relates to the systems and procedures followed at SEBI. Additionally, the respondent informed that the information is strategic in nature, disclosure of which may hamper the decision making by SEBI and so the information relates to personal information, the disclosure of which may cause unwarranted invasion into the privacy of the individual. In view of the same, the information be exempt u/s 8(1)(a) and 8(1)(j) of the RTI Act, 2005.

12. I have perused aforesaid request and the response provided thereto. As regard request no. 6 of the application regarding pay scale of SEBI officials, I find that the respondent has adequately addressed the said requests by providing the information available with him. Accordingly, no further intervention of this forum is warranted.
13. With regard request nos. 5, 6 and 7 of the application pertaining to information regarding complaints, disciplinary action, basis of promotion, etc. pertaining to SEBI officials, I note that the respondent, in his response, has *inter alia* invoked the provisions of Section 8(1)(a) of the RTI Act to deny information to the appellant. In this regard, I note that the information sought by the appellant appears to be strategic in nature and relates to the internal functioning of SEBI. I also note that the

respondent has informed the appellant that the disclosure of the information sought may hamper the decision making by SEBI in its supervisory and regulatory role. I do not find any reason to disbelieve the said response. In this context, I note that in *ICAI v. Shaunak H. Satya*, [(2011) 8 SCC 781], the Hon'ble Supreme Court held that: - "*We however agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Sections 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and the Government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.*" In view of these observations, I concur with the response of the respondent that the requested information is exempt from disclosure under Section 8(1)(a) of the RTI Act.

14. Further, with respect to request nos. 5, 6 and 7 of the application, I find no infirmity in the denial of the information by the respondent under Section 8(1)(j) of the RTI Act. In this context, I note that in the matter of *Girish Ramchandra Deshpande vs. Central Information Commissioner* (judgement dated October 03, 2012), the Hon'ble Supreme Court held: "13. *We are in agreement with the CIC and the courts below that the details called for by the Petitioner i.e. copies of all memos issued to the third Respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in Clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the Petitioner cannot claim those details as a matter of right.*" The said judgement was relied upon by the Hon'ble Delhi High Court in the matter of *Union Public Service Commission vs. R. K . Jain* (order dated November 6, 2012) wherein it was observed that : "*The ratio of the dicta aforesaid of the Supreme Court is that the disciplinary orders and the documents in the course of disciplinary proceedings are personal information within the meaning of Section 8(1)(j) and the disclosure of which normally has no relationship to any public activities or public interest and disclosure of which would cause unwarranted invasion of the privacy of an individual.*" In view of the said judgements, I agree with the response of the respondent that the requested information is exempt from disclosure under section 8(1)(j) of the RTI Act. Further, the appellant has not established

existence of larger public interest in seeking the information. Accordingly, I do not find any deficiency in the response.

15. **Request No. 8 of the application** - The appellant, vide his request no. 8 of the application dated May 04, 2024, *inter alia*, sought information regarding Chief Vigilance Officer.
16. **Reply of the Respondent** - The respondent, in response to the aforesaid request informed that the details with regards to Chief Vigilance Officer in SEBI is available on the SEBI website. The respondent also provided the relevant link to access the same.
17. I have perused the aforesaid request and the response provided by the respondent. On consideration, I find that the respondent has adequately addressed the said requests by providing the information available with him. Accordingly, no further intervention of this forum is warranted.
18. In view of the above observations, I find that there is no need to interfere with the decision of the respondent. The Appeal is accordingly dismissed.

Place: Mumbai

RUCHI CHOJER

Date: October 16, 2024

**APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA**